Senate Procedures for Consideration of the Budget Resolution/Reconciliation "Vote-A-Rama"

Testimony before the Committee on the Budget, U.S. Senate
October 4, 2011
G. William Hoagland[1]

Mr. Chairman, Senator Sessions and members of the Committee, I appear before you once again to discuss the Senate practice that has become unflatteringly known by the term "vote-a-rama." The only other time I was asked to return to this my favorite Senate Committee and testify was on this same subject in 2009.

In fairness, except for the fact that there has been only one full budget resolution debated in the U.S. Senate since that testimony, you will not be surprised to find that my comments on this subject have not changed significantly over the last two years.

Three issues then continue to remain true today.

First -- vote-a-rama – has and always will create much angst, frustration, and exhaustion for both Committee and floor staff. Back to back votes, limited time to review and debate, and uncertainty on what Senators are voting on are the hall mark of vote-a-ramas. This is true whether at the end of a budget resolution's 50 hours of debate or a reconciliation bill's 20 hours of debate.

The inconvenience visited upon staff from this practice, I believed then as I do now, is acceptable as staff's responsibility to the floor managers to help complete the measure. Unlike many bills that come before the Senate and could be postponed to a later date or even next session of Congress when cloture has not been invoked, budget resolutions and reconciliation bills are time sensitive and must be disposed of one way or the other. And despite the growing practice and frustration engendered by vote-a-ramas, budget resolutions and reconciliation bills have always been brought to completion.

[1] 1 Staff of the Congressional Budget Office 1975 to 1981. Staff to the U.S. Senate Budget Committee, 1982to 2002. Staff to the U.S. Senate Majority Leader 2003-2007. Currently Vice President for Federal Affairs, CIGNA Corporation.

Second, an infinitely more important issue today when the Congress is given such low public ratings, is the feeling that this procedure somehow has helped contribute to diminished public respect for this institution over the years. The public watching on C-Span does not understand the intricacies of Senate rules, but they do understand confusion, frustration and seemingly endless votes on measures whose merits or demerits have not been fully debated. Worse, the spectacle of a vote-a-rama has bolstered opponents of the congressional budget process – and provided fodder for eliminating the process completely when what is called for is in fact a strengthened and reformed process particularly in these difficult fiscal and economic times.

Third and critically, the rights of the minority have to be protected in this process. The budget resolution and reconciliation bill are the only Senate vehicles with a guaranteed right for any Senator to offer an amendment and receive a vote. Rightly or wrongly, vote-a-rama does ensure that not only the minority but any Senator can offer amendments. Otherwise, it would be possible for the majority to continuously yield time off the resolution to prolong debate on only a handful of amendments until time had expired, fill the tree and lock out amendments until time had expired, or yield back time to consume portions of the hour limit so that amendments could not be offered under the cap. All three practices – yielding time to limit amendments, filling the tree, and yielding the majority's share of time – have been used to varying degrees over the years to weaken minority rights.

But this is a delicate balancing act that must not just accommodate an individual Senator but also accommodate the Senate itself.

There may be a better, more orderly, and fairer way to complete action on these vehicles.

In my 2009 testimony I tried to determine how this process might have come about from the legislative history of the Congressional Budget and Impoundment Act. In the interest of time I will not repeat that analysis except to observe that the history would suggest that the authors of the original Senate bill in 1973 -- Senators Ervin, Metcalf, Percy, Nunn, Brock, and Cranston -- included language on procedures for consideration of the "budget limitation bill" that is almost identical to the language found today in Section 305 (b)(1) of the final Act. When the bill was reported from the Senate Committee on Government Operations 100 hours of debate were allowed on the budget resolution.

The Senate drafters were clear and explicit that the budget resolution was to be treated as a highly privileged matter and those 100 hours was to give assurances that both Houses of the Congress had adequate time for the full consideration of the budget.

The one addition to my 2009 testimony I would add today is that on closer examination of what else was going on in the Senate at that time may have informed the drafters of the Budget Act.

Cloture became more frequent in the 1970s, but Senator James Allen (D-AL) perfected the "post-cloture filibuster" that did not limit the number of amendments that could be filed, read, time in quorum calls, roll call votes or even how much time could be consumed overall.[2] The first real form of a vote-a-rama on a clotured bill.

It was Senator Byrd in 1979 who successfully proposed changing Rule XXII to control the post-cloture filibuster by setting an overall 100 hour time limit for consideration post-cloture and a filing requirement on first and second degree amendments. Obviously the same 100 hour time limit as was set by the drafters of the Budget Act six years earlier but maybe because the Senator Allen's post-cloture filibuster had not fully developed in 1973, the drafters of the Budget Act did not distinguish between debate time and full consideration time.

I conclude today as I did two years ago that the legislative history never envisioned "vote-a-rama" simply because it was assumed that there would be sufficient and adequate time available for the full consideration of the resolution both before the resolution was presented to the Chamber and within the established statutory time constraints. Further that the strict requirement that amendments offered to the resolution must be germane[3] would also be a limiting factor.

But this was not to be the case particularly beginning toward the latter part of the 1990's when the number of amendments to resolutions exploded. For the first 20 years of the Budget Act the average number of amendments offered yearly to a resolution was 21. The next 12 years the number averaged nearly 80, reaching a peak of 113 in 2008, and as the Congressional Research

[2] Martin B. Gold, Senate Procedure and Practice, Rowman &Littlefield Publishers, Inc. 2004.

[3] Section 305 ©, (4): Germaneness: prohibits the consideration of non-germane amendments to budget resolution and by cross reference to Section 310 (e), to reconciliation legislation. An amendment is per se germane: (1) changes numbers, (2) motion to strike, (3) changes dates. Other amendments are determined on a case by case basis by the Parliamentarian.

Service has analyzed – 60 percent of those votes in 2008 occurred after all time had run out on the 50 hours.

I will give the benefit of the doubt to the motives of Senators and their staffs drafting amendments to these vehicles. One can argue that vote-a-rama is not intentionally meant to be a delaying or dilatory tactic or wanton revanchism for after all a final vote will eventually happen if for no other reason than out of exhaustion. Rather, one might argue that Senators must feel that the full consideration of such an important blue-print to guide fiscal policy has not been achieved within the 50 hours of time available. Arguing for additional time, 100 hours as an example on a resolution or reconciliation bill runs counter to the current demands placed on Senators and any Majority Leader trying to schedule floor consider or other legislation. Further, expanding time would place tremendous pressure on the managers of the resolution to secure Senators' participation throughout the period and not, as the members are wont to today, wait until the end of the time period to offer amendments.

So what is the alternative to increasing the statutory time for consideration?

Since the late 1990's proposals to find a procedure allowing for greater review, study, and transparency of amendments offered within time constraints has been the direction most reform proposals have taken.

In 1997, with Republicans in the majority, the Senate did adopt by a vote of 92-8 an amendment offered by Senator Byrd that modified debate on a reconciliation bill that did: (1) increase the statutory time on reconciliation to 30 hours (from 25 hours), (2) set a time period for the filing of first degree amendments within the first 15 hours and second degrees within the first 20 hours, but most importantly (3) adding in statute Senate Rule XXII language that brought to a close all action on a reconciliation bill at the end of the 30 hours. Effectively a scaled down version of his successful 1979 changes to Rule XXII post-cloture filibuster.

I would note that you, Mr. Chairman and you Senator Sessions, voted in support of the Byrd amendment as did former Chairmen Hollings, Domenici, Nickles, and Gregg and former Ranking Member Senator Lautenberg. And every member of the U.S. at that time that serves on the Senate Budget Committee today voted for that amendment – Senator Grassley, Senator Murray (obviously the Co-Chair of the Joint Select Committee), Senator Enzi, and Senator Wyden.

Unfortunately the amendment added to the Revenue Reconciliation Act of 1997 died in conference. As you will recall that bill was a major component of the balanced budget agreement reached that year, and bipartisanship could not be found in conference on the Byrd amendment so it was dropped, which quite frankly made no sense to me since it was a Senate procedure not directly impacting the House.

Following the explosion of amendments offered to the budget resolution in 1998, Senator Domenici directed me to again work with Senator Byrd's staff and others to address the issue. S.Res.6 was introduced in January 1999 and among other things limited debate on resolutions and reconciliation bills to 30 hours, specified filing deadlines for amendments. No action was taken on S.Res.6.

In 2006, Chairman Gregg introduced reform legislation that maintained the 50 hours but eliminated vote-a-rama by limiting time to "consideration" rather than "debate" the post-cloture-rule.

Senator Specter's proposal in 2008 and later in 2009 in many ways returned to that which the Senate adopted on a voice vote in 2001 but which was subsequently dropped in conference --a 50 hour time limit, first degree amendments to be filed in the first 10 hours, second degrees in the first 20 hours, and one calendar day time-out for review of all amendments printed in the Congressional Record before voting. It did not, however, eliminate the possibility of extended voting well beyond the statutory 50 hours; only a post-cloture rule would accomplish that objective.

So what should or should not be done? The Senate, indeed the Congress, needs to rethink and decide what its goals are in considering a budget resolution. If the Senate wants to limit all time for consideration of a budget resolution or reconciliation bill to a specified time while accomplishing the goals of this instrument, then there is one sure way to accomplish that through the imposition of a post-cloture rule. However, the risks remain high that such an approach would preclude the minority from offering amendments if the time limit is not expanded to more than the 50 hours today.

Alternatively, if the purpose of the budget resolution is to provide an opportunity for the Senate to engage in a logical, fully informed debate surrounding fiscal policy while protecting the rights of the minority to express their views, then the reform proposals that have been evolving since 2001 -- setting deadlines for submitting amendments early within the time period -- seems appropriate. The risk of this approach, however, means that many amendments could still be filed requiring votes beyond a 50 or 30 hour time limit, and vote-a-rama continues. The benefit, however, the Senate would have a better, informed debate and avoid some of the pandemonium present in the current process.

However the Senate chooses to address this issue, there are a few recommendations updated from my 2009 testimony I would offer today:

1. Require at a minimum 1 day lay-over of the reported resolution or reconciliation bill before proceeding to the Senate floor. Similarly, I respectfully suggest that the rules here in the Committee allow also for a 1-day lay-over when the Chairman or Ranking Member offers their caucus' mark on the budget.

2. Require unanimous consent to yield back time on a budget resolution or reconciliation bill.

3. If 50 hours is the statutory time limit, limit to two amendments per Senator and require (as is the practice today) to alternate amendments but begin with the minority having the right of refusal on the first amendment and require first degree and second degree amendments to be filed within a defined time period of the overall 50 hours.

4. Adopt <u>in statute</u> a clear definition of germaneness that would prohibit the consideration of Sense of the Senate amendments both during the consideration of budget resolutions and reconciliation bills. I thought this had been resolved, but I understand the practice continues today through revised interpretations from the Senate Parliamentarian's office. This is not a criticism of that office and I realize it is easier said than done to define germaneness. I simply believe that without statutory guidance the Senate Parliamentarians must use their discretion in interpreting amendments, a power that I do not believe should be bestowed on that office.

I would also expand this prohibition to "deficit neutral reserve funds" which have proliferated in part as a way around the germaneness test. Former Senator Specter's proposal to not allow

provisions contained in a budget resolution that included programmatic detail might be a way to limit reserve funds.

5. Falling in the category of "green-eye shade" issues: either due away with Function 920 (Allowances) in the reported budget resolution, or if technically needed, allow for the reporting of a budget resolution with the function but make it out of order to offer an amendment that touches the function on the Senate floor. Function 920 has become the magic asterisk for offsets to often frivolous spending amendments in other functions.

One last observation -- I believe that while increased vote-a-rama activity is a function of many variables, one of those variables is whether the resolution is considered in an even versus an odd numbered year. Too many times I was aware of amendments drafted on both sides of the aisle to stoke political press releases, some I probably had a hand in, and it was unspoken, but generally understood, that political campaigns considered budget resolutions the mother load of opportunities for political ads. I have no full proof suggestions to how to deal with the "gotcha" amendments; unless it would be to establish a biennial budget and appropriation process with the budget resolution considered in the odd-numbered year.

Thank you for the opportunity to return and testify before the Committee where I spent so many hours of my career. I still believe the Committee has a major role in helping to direct sound and reasonable fiscal policy and that reforms to the process can enhance that role going forward to the benefit of the country.